

Terms of Purchase of Preis & Co Ges.m.b.H.

Version: July 2017

1. Order confirmation

Our order must be confirmed within 3 working days and indicate the prices and delivery time; the supplier's silence shall be considered full acceptance of the order subject to the terms set out.

By accepting and executing the order, the supplier fully agrees to our Terms of Purchase.

Any terms included in the offer or order confirmation which deviate from our Terms of Purchase, particularly such as those contained in the general terms and conditions of the supplier, shall be deemed invalid without our written approval. Any oral agreements require our written confirmation in order to be effective.

These Terms of Purchase shall also apply to all future orders, even if such orders are accepted without using this form.

Our Terms of Purchase shall also apply if we take delivery without reservation while being aware of terms of the seller which are contrary to our terms or which deviate from or supplement our terms.

2. Delivery dates

The prescribed delivery date is the day on which the goods must arrive at the stipulated delivery address pursuant to our order (fixed-date transaction). In the event that an advance order was submitted by fax or email which already sets forth the order, the date indicated therein shall apply.

As soon as the supplier recognises that a delivery cannot be effected in full or in part, they shall immediately notify us thereof by indicating the reasons. In case of any delays – including partial delays – we are entitled to either declare our withdrawal from the contract or continue to insist on the fulfilment of the order with regard to the full delivery or the outstanding part without setting a grace period.

We are further entitled to discount a contractual penalty of 1% (yet not more than a maximum of 10%) of the contract value of the full order for each commenced week of the delay, which is not subject to any judicial mitigation, and irrespective of whether the supplier is at fault or any damage has occurred. This penalty only constitutes the minimum compensation, which is why we reserve the right to claim damages in case of any higher damage occurring in excess of the penalty.

If the delivery date cannot be met due to force majeure or due to us providing subsequent instructions, we shall be notified thereof immediately. Otherwise, no entitlement to extending the delivery date can be established. In case of a justified extension of the delivery date, the new date shall be agreed on in writing. The original terms shall continue to apply even if this date is exceeded.

Force majeure events refer to such unavoidable circumstances as cannot be foreseen by the invoking party upon concluding the contract, and which prevent the party from fulfilling their contractual obligations. Force majeure events refer to all types of war and natural disasters. The following events in particular shall not be considered force majeure: strikes, manufacturing flaws, defects of unmachined parts, supply shortfalls, delays on the part of subcontractors, etc.

3. Delivery, shipment and packaging

Unless otherwise agreed on in writing, deliveries and shipments shall be covered by transport insurance and shall be sent duty paid, including packaging, free of all charges and at the risk and expense of the supplier to the destination indicated by us.

The competent and professional packaging and shipment are part of the scope of delivery, and the supplier shall assume the liability for any damage resulting from a violation of these terms.

The supplier shall immediately furnish us with a complete dispatch note in duplicate for each shipment related to our order and indicating our order number. Each package shall furthermore contain a packing slip or delivery note including detailed information on the contents.

For deliveries of undeclared goods, the relevant customs documents and, if required, certificates of origin, movements certificates etc. shall be enclosed with the shipment. We may demand special transportation regulations for deliveries from abroad, whereas the supplier may also request such regulations subject to our approval.

If the shipping address is not the address of Preis & Co Ges.m.b.H., but is associated with a different recipient, deliveries shall be effected in neutral packaging and with a neutral packing slip or delivery note in our name. The full shipping address shall be indicated on all shipment-related documents. We do not accept cash-on-delivery shipments. Should the shipment or delivery provisions or terms be missing, the most inexpensive shipment and delivery methods shall be selected on our behalf.

For oversized freight, etc. the supplier shall obtain the necessary permits (such as a permit for oversized freight) from the competent authorities in good time prior to dispatching the corresponding delivery.

Any expenses or damages resulting from disregarding our shipping instructions shall be borne exclusively by the supplier.

4. Acceptance and guarantee

The confirmation on the delivery note receipt – as well as payment – are no acknowledgement of the proper execution of the delivery. The goods are only accepted subject to this reservation. The goods are only deemed accepted with legal effect after a random check has been performed at the place of use.

We examine the goods for obvious defects, missing quantities and transport damage within the scope of random checks, which we may conduct within 90 days from acceptance. We are not required to perform any other checks.

If the delivery does not correspond to the agreements, customary terms or safety regulations, we are entitled to immediately withdraw from the order and obtain a replacement at the expense of the seller.

Unless otherwise agreed for in writing, the supplier shall – for the duration of one year from acceptance and in addition to their statutory warranty obligation – assume the full guarantee for the proper construction in line with the order, the current state of the art and the intended purpose, for the production quality, guaranteed properties, function and performance and use of fault-free material, and shall further guarantee that the delivery is complete, fully functions and complies with all prescribed standards and applicable laws in a such way that the supplier either shall replace all parts which become useless, defective or damaged during the aforementioned period immediately free of charge, and at the destination or installation location (including inspection, transport as well as disassembly and assembly costs, even if the defect can be remedied), or repair, or reimburse us for the damage we incurred due to the uselessness or defectiveness of the delivery item(s) and to grant a discount or we may withdraw from the contract at our discretion. This also applies mutatis mutandis in the event of a warranty claim.

In urgent cases, or if the supplier defaults on their performance with regard to the aforementioned guarantee, we may at our discretion choose to remedy the fault or have it remedied by a third party or obtain a replacement at the expense of the supplier.

In case of a replacement or rectification, the full guarantee period commences at the time of the new commissioning.

For concealed defects (i.e. defects, which already existed upon acceptance, yet could only have been detected by making unreasonable efforts), the statutory requirement to give notice of defects as well as the contractual guarantee period only commence when we actually become aware of the defect. If we incurred any processing costs prior to such recognition, which were in vain due to the defect, the supplier shall reimburse us such costs in full.

By accepting the order, the supplier explicitly covenants that the delivery items are not subject to any rights, particularly third-party property rights (e.g. patent and utility models, trademark rights, copyrights, company or trade secrets). However, if any third-party rights are asserted nonetheless, the supplier shall indemnify and hold us harmless against such claims and fully compensate us for any damage arising in this connection.

5. Liability of the supplier

The supplier shall notify us in case any instructions, specifications, samples or patterns provided by us or a third-party are incorrect or inappropriate, provided the supplier is aware of such circumstances or as soon as they become aware of such circumstances. If the supplier fails to fulfil this notification obligation, they shall be liable for any disadvantages arising for us from such omission, particularly for any and all claims our customers may assert against us.

We shall under no circumstances acknowledge any exclusion of the supplier's liability for slight negligence, for consequential damage or for material damage related to product liability. For a period of 12 years from delivery, the supplier shall to indemnify and hold us harmless against any and all third-party product liability claims, at our request to indicate the respective manufacturer, importer or other party which delivered the product to them, and shall provide us in due time with all appropriate documents to defend against third-party product liability claims.

The designer (planner, architect, structural engineer, etc.) shall undertake to reimburse us for any and all damage incurred in the event that any product liability claims are asserted against us due to design flaws.

We hereby explicitly point out that we process the delivery items further and/or install them. The supplier shall therefore also be fully liable for any claims the customers assert against us and for any other damage we incur (including consequential damages due to defects) because the delivery does not correspond to the current state of the art, the design does not correspond to the intended use, the delivery lacks a guaranteed quality, does not function or perform properly or was constructed using defective material, or because not all standards and statutory provisions were adhered to, or because the delivery was affected by another defect.

If any claims are asserted against us by a third party based on liability without fault and subject to mandatory foreign law, the supplier shall indemnify us from our liability to the extent they would be held liable.

6. Quality assurance

The supplier's quality assurance system must be able to meet the quality assurance standards applicable to the transaction. At our request, the supplier shall have their quality assurance system audited. The complete required quality documentation (work certificates, acceptance test certificates, etc.) shall be deemed a material part of delivery. A delay in such documents in due time therefore shall have the same consequences with regard to the payable amount and any penalties as a delay in delivery of the goods.

7. Safety requirements

Unless any stricter provisions are agreed, all facilities, machines and equipment require the prescribed protections pursuant to the *Allgemeine Maschinen- und Gerätesicherheitsverordnung (AMGSV)* [General Machine and Equipment Safety Regulations] and the *Besondere Maschinen- und Gerätesicherheitsverordnung (BMGSV)* [Special Machine and Equipment Safety Regulations] as in force from time to time. When producing electrical systems or delivering electro-technical products, the supplier shall undertake to comply with the specifications relating to the measurements, quality and execution provided by us, as well as with any and all electro-technical safety regulations, i.e. the *Elektrotechnikgesetz* [Electrical Engineering Act] No. 106/1993 and all regulations based thereon, as in force from time to time, as well as any other national and international standards, and the recognised rules of technology.

8. Hazardous goods

Unless any stricter provisions are agreed, the seller shall – in the case of orders concerning hazardous goods – indicate no later than in the order confirmation that the goods are hazardous, and further to comply with the applicable provisions regarding the transport of hazardous goods such as the *Accord européen sur le transport des marchandises dangereuses par route (ADR)* [European Convention on the International Road Transport of Hazardous Goods]/*Gefahrgutbeförderungsgesetz-Straße (GGSt)* [Law on the Road Transport of Hazardous Goods] (road transport), the *Regelung für Gefahrguttransport (RID)* [Regulation for the Transport of Hazardous Goods] (railway), the Dangerous Goods Regulation of the International Air Transport Association (IATA-DGR) (air transport) and the International Maritime Code for Dangerous Goods (IMDG) (maritime transport).

9. Retention of title and non-assignment clause

All deliveries effected to us must be free of any retention of title. Such reservations shall be ineffective also without our explicit objection. Claims arising from deliveries to us are only eligible for assignment subject to our explicit prior written approval, as such assignment would otherwise be ineffective.

10. Material supply

Material supplied by us shall remain our property, shall be labelled as such and shall be stored separately. If such materials are processed, the new and reworked chattel shall immediately be deemed assigned to us – even in semi-finished condition. The supplier shall personally ascertain appropriately that instructions and materials, be it materials or (preliminary) work performed by third parties, which were provided by a third party, correspond to the current state of the art and fully comply with our quality standards and terms. We are in no way obliged to check if the provided instructions and materials are appropriate and free of defects, as this is exclusively the obligation of the supplier. The supplier shall ensure that the provided instructions and materials meet all requirements, particularly all qualifications provided by us, and shall indemnify and hold us harmless against any and all claims arising in connection with the provided materials.

11. Liability and material supply

Claims for damages of any kind against us are excluded provided that we, our legal representatives or agents caused the damage due to slight negligence.

If a third party provides instructions or materials or indicates which materials the supplier is to work with, claims of any kind, whether warranty claims or claims for damages, arising out of or in connection with the provided materials, instruction or preliminary work, shall be excluded.

12. Drawings

Drawings, sketches, patterns, models, aids and other documents transmitted for the purpose of executing the order, shall remain our property, shall be considered trade secrets and shall not be disclosed to any third parties. The mentioned documents shall be labelled property of Preis & Co Ges.m.b.H. when stored.

13. Invoice

After the delivery has been effected, the invoice shall be submitted in triplicate to our address A-2763 Pernitz, Josef Nitsch-Strasse 5. A separate invoice shall be prepared for each shipment and for each order form, indicating the full order number. Processing several orders in one invoice is not permitted. Invoices for work performances and assemblies shall contain the number and date of the corresponding daily rates and time statements confirmed by us. Invoices which are not in accordance with these provisions are considered not issued.

14. Terms of payment

Unless otherwise explicitly agreed, the prices are inclusive of packaging and free delivery to the address of the recipient, and further include all ancillary expenses as well as any customs duties, and are considered fixed prices.

Unless otherwise agreed, payment shall be made 30 days from receiving the invoice and accepting the goods, with a cash discount of 3% or within 90 days net. Payment may be withheld until any notified defects have been remedied, whereas our entitlement to a cash discount shall remain in force. We may retain up to 10% of the order value for the duration of the guarantee period. The supplier shall to accept 90-day bills of acceptance to settle the invoices which shall constitute payment.

15. Performance, place of jurisdiction, governing law

The place of performance for deliveries is the destination indicated by us. The place of performance for payment and the exclusive place of jurisdiction for all disputes in connection with the agreement or its dissolution is Wiener Neustadt, Austria. All other places of jurisdiction, particularly pursuant to Section 87 *Jurisdiktionsnorm (JN)* [Jurisdiction Act] and Section 88 *JN* shall be excluded.

The agreement is exclusively governed by Austrian law under the exclusion of all rules on conflict of laws which refer to laws other than Austrian law. The applicability of the United Nations Convention on the International Sale of Goods shall be excluded.

16. General provisions

The supplier shall be liable for their subcontractor's compliance with our Terms of Purchase.

The supplier shall undertake to execute the orders to the best of their knowledge and ability and by exercising reasonable care even beyond the terms agreed and shall also assume the responsibility for such compliance.

Should one or several of these provisions be ineffective, the validity of the remaining provisions shall remain unaffected. The corresponding invalid provision shall be replaced by a contractual or statutory provision which most closely corresponds to our intentions.